



CC Docket No. 94-102

July 7, 2003

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Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Attention: Stan Wiggins – Wireless Telecommunications Bureau – Policy
Division

**Regarding: Montana Wireless, Inc. d/b/a Blackfoot Communications
Supplement to Petition for Temporary Waiver of Rule Section 20.18(c).**

Dear Ms. Dortch:

Attached is Montana Wireless, Inc. d/b/a Blackfoot Communications' supplement to request for a temporary waiver of the Commission's Rules for implementing TTY.

Please direct any questions regarding this filing to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Squires", is written over a horizontal line.

William Squires
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In the Matter of)	
)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	
)	
Supplement to Petition for Limited Waiver)	
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Supplement to Request for Limited Waiver

In its June 28, 2002 Petition for Limited Waiver, MWI requested, through its attorneys, an extension to June 30, 2003, to test and deploy TTY capability throughout its network. This request was made as a result of ongoing delays caused by its long time vendor Nortel. Since the June 28, 2002 Petition for

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Limited Waiver, MWI has timely filed its quarterly reports informing the Commission of ongoing implementation efforts. On June 30, 2003 Commission staff contacted MWI and pointed out that its request for waiver was expiring on that date. After discussing the status of MWI's efforts toward compliance, Commission staff requested a Supplement to the Request for Limited Waiver. MWI therefore respectfully requests that it be allowed until March 31, 2003, to test and deploy TTY capability throughout its network.

I. Background

MWI is a wholly owned subsidiary of Blackfoot Telephone Cooperative, Inc. ("Blackfoot"), a rural telephone cooperative that provides local exchange telephone and other telecommunications services in Western Montana area. MWI is a licensee of Broadband PCS Station WPOI210 in the Broadband Personal Communications Service ("PCS"). Station WPOI210 is a license partitioned from the 30 MXz A-Block licensee for the Spokane-Billings Major Trading Area ("MTA"). On November 1, 1996, the Commission approved MWI's application to partition the Missoula and Kalispell Basic Trading Areas ("BTAs") from the Spokane-Billings MTA and Powell County from the Butte BTA. MWI uses Nortel Network's ("Nortel") CDMA equipment for its PCS network.

MWI is committed to complying with Commission requirements regarding TTY, Enhanced 911 ("E911"), Automatic Location Identification ("ALI") and Communications Assistance for Law Enforcement Act ("CALEA"). However, in order to comply with these government mandates, MWI must upgrade its system. As the Commission is aware from MWI's TTY Quarterly Reports, due to Nortel's

discontinuation of its support of MWI's current dual-load wireless and wireline traffic switch, MWI must purchase a second switch and split the traffic from the existing switch. Before MWI can split the traffic, it must upgrade the system software to LWW007 (the equivalent of wireless MTX 9). Once the switch split is achieved, MWI must upgrade the system software a second time to wireless load MTX 10. Because of Nortel's decision to no longer support its dual mode switch, MWI has been put in the unusual situation of having to perform a technically complex switch split seamlessly. Nevertheless, MWI remains committed to doing so, as to comply with Commission E911, TTY, ALI and CALEA mandates.

Before MWI can proceed with the complex implementation it must obtain the necessary software and hardware from its longtime vendor, Nortel. As MWI informed the Commission in its April 16, 2003 Quarterly Report, it was waiting for a second quote from Nortel. Since that time, the quote was received and a purchase order was issued on June 13, 2003 to obtain the necessary software and hardware. A Nortel project manager was assigned on June 19, 2003. Although no firm implementation schedule has been developed, MWI has made sure that Nortel is clear about its desire to complete this implementation by the end of 2003. With that goal in mind, Nortel established a target date of December 15, 2003, for completion of upgrades and the beginning of testing. Unfortunately, MWI anticipates a delay in the testing of the upgrades due to the holiday season, therefore MWI expects implementation and testing to be completed during the 1st quarter 2004.

II. Good Cause Exists for an Extension of the Waiver of the June 30, 2002 Deadline

Good cause exists for the Commission to grant MWI's request for an extension of its limited waiver of the June 30, 2002 TTY compliance deadline.² Good cause is shown and waiver of a rule is appropriate if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."³ Similarly, under the Commission's rules governing Wireless Radio Services, the commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁴ The commission has consistently concluded that waiver of a regulatory deadline is appropriate when noncompliance "is due to circumstances beyond the licensee's control."⁵ Moreover, in the context of other Section 20.18 regulations governing deployment of 911 location identification capabilities, the Commission has specifically recognized that "technology-related issues" delaying implementation could warrant grant of a waiver to allow for their resolution.⁶

² The Commission may grant an extension or waiver of a compliance deadline for good cause shown. See 47 C.F.R. § 1.3.

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir 1969).

⁴ See 47 C.F.R. § 1.925(b)(3).

⁵ E.g., Order, *McElroy Electronics Corp.; Request for Clarification of Commission Rules Regarding Section 22.911(a) in Relation to construction of Cellular System for Market No. 15-A2*, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

⁶ See Fourth Memorandum Opinion and Order, *Revision of the commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC 00-326, 15 FCC Rcd. 17442, 17459, ¶ 43 (2000) ("In the case of E911, we have recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001, and indicated that these cases

In MWI's case, special circumstances exist because Nortel was unable to provide a quote regarding the projected cost of the switch installation and split due to its limited resources for assisting its customers in complying with regulatory mandates. Now that the quote has been provided, and a purchase order issued, MWI is waiting for an implementation schedule. MWI is eager to begin implementation and testing but recognizes that the implementation and testing could push completion well into 1st quarter 2004. Therefore, MWI is not requesting an open-ended extension, but instead intends to promptly achieve compliance within a reasonable period. Strict enforcement of the TTY compliance deadline in this instance would be inequitable and extremely burdensome on a small carrier such as MWI, because it lacks the resources and market power that larger carriers can use to influence vendor delivery schedules.

Finally, the underlying purpose of Section 20.18(c) – “requiring carriers to achieve TTY/digital compatibility at the earliest possible date”⁷ – would be frustrated by strict enforcement of the rule's June 30, 2002 deadline in MWI's case. The FCC has suspended and waived the compliance deadline as to digital wireless carriers for more than three years “because the technology did not exist to enable TTY signals to be transmitted over digital wireless systems at the time the rule was originally implemented.”⁸ When it became apparent that the wireless industry and representatives of the disability community had developed solutions for nearly all air interfaces, the FCC adopted a two-stage deadline

could be dealt with through individual waivers as these implementation issues are more precisely identified.”).

⁷ *Fourth Report and Order* at ¶ 7.

⁸ *Id.* at ¶ 7.

where carriers were to have obtained all software upgrades and equipment necessary for their systems to be capable of transmitting 911 calls from TTY devices by December 31, 2001, and “an additional six-month period (until June 30, 2002) to integrate, test, and deploy the technology in their systems in conjunction with the public safety community.”⁹ Enforcing a strict deadline against MWI when the necessary hardware and software upgrades for TTY capability on its network are not available to it would defeat the whole purpose of the rule; MWI requires the assistance and cooperation of its equipment vendor, Nortel, to achieve compliance. Such assistance and cooperation, while promised, has been slow in coming. MWI submits that application of the June 30, 2002 deadline to it would be contrary to the public interest and unduly burdensome and respectfully requests an additional nine months, until March 31, 2004, to come into compliance with Section 20.18(c) of the Commission’s Rules.

MWI is requesting an additional nine month extension because several steps must be taken before it will achieve compliance. First, MWI must receive an implementation schedule from Nortel. Then MWI must upgrade its software in preparation for the installation of the second switch. MWI must also determine if it will require any modifications to its physical plan to accommodate the additional hardware, such as additional cooling capability. Once the new switch is installed, MWI must install a second software upgrade that will permit it to split the traffic from the single switch, and accomplish that split. MWI understands that it will take about ten weeks to complete each software upgrade. When the second

⁹ *Id.* at ¶ 8.

upgrade is completed, MWI will be in a position to test and deploy the new technology.

MWI submits that it had no reasonable alternative than to wait for Nortel to provide it with a quote for the aforementioned switch splitting and software upgrades. MWI's system is completely based on Nortel infrastructure; any alternative TTY solution would have required a complete replacement of MWI's entire network. Such an action would be financially prohibitive and economically wasteful and, in any case, would not have been achievable by the June 30, 2002 or June 30, 2003 deadlines. MWI chose the dual switch to serve its rural market because it was more economical than a two-switch system. As a rural operator, MWI's license area is comparatively sparsely populated; it does not receive a return on its infrastructure development investment as rapidly as non-rural operators. Therefore, when constructing its system MWI chose a dual load switch, the most economical alternative. At the time MWI purchased the switch, it did not envision that Nortel would discontinue its support of the technology only a few years later.

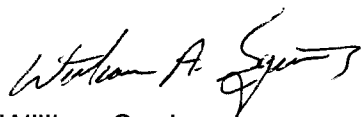
As demonstrated above, MWI has met the Commission's standards for obtaining the requested waiver extension of Rule Section 20.18(c). While Section 20.18 of the Commission's Rules imposes TTY obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged that achieving full regulatory compliance requires cooperative efforts of carriers and equipment manufacturers and suppliers. As a service provider only, MWI would be unable

to achieve compliance with the Commission's TTY requirements without the availability of necessary equipment. MWI simply does not and did not have the equipment available to it to meet the June 30, 2002 or June 30, 2003 deadlines. As a small market carrier, MWI does not have the buying power of the national carriers and must wait for the equipment requirements of the larger carriers to be satisfied before Nortel can turn its attention to MWI's requirement to upgrade its system to meet regulatory obligations.

III. Conclusion

It is clear that MWI has been diligent in pursuing compliance with the Commission's TTY requirements, but is unable to meet the requirements due to matters that are entirely beyond its ability to control. In view of the foregoing, MWI respectfully submits that an extension of the waiver requested herein is in the public interest and respectfully requests that it be granted.

Respectfully Submitted,



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